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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 342

WARREN COUNTY, MISSISSIPPI,
Petitioner,

vs.

C. E. HESTER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF MADISON PARISH, ET AL.,
Respondents.

BRIEF OF RESPONDENTS FILED IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

F. G. HUDSON, JR.,
Monroe, Louisiana,

THOMPSON L. CLARKE,
District Attorney,
St. Joseph, Louisiana,
Attorneys for Respondents.

HUDSON, POTTS, BERNSTEIN
& DAVENPORT,
Of Counsel.

HARTER PRINTING CO., INC., NEW ORLEANS

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May It Please the Court:

I. *NO STATE STATUTE INVOLVED*

The only basis asserted for jurisdiction here, via Certiorari, is asserted in the application of petitioner (p. 2) to be *"U.S.C.A. Title 28, Section 1257 (3)"*, which, so far as here pertinent reads:

> *"Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:*

> *(3) By Writ of Certiorari, * * * where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution * * * of the United States * * * ".*

No "State Statute" of Louisiana is here attacked as unconstitutional.

The one and only issue here presented by petitioner, Warren County, Mississippi, the owner of an interstate toll bridge, is as to the construction and application of a tax-exemption provision of the Constitution (not statute) of Louisiana, exempting "public property", which the Supreme Court of Louisiana held (Tr. 76):

> "We think it plain that the exemption of all public property has reference only to property of Louisiana and its political subdivisions. There is no reason whatever to believe that the people of Louisiana, in adopting their Constitution, intended to exempt from taxation the local property of foreign countries, other states or their political subdivisions".

Also, the tax here involved is not, as stated on p. 8 of Applicant's petition for Writ, a purely local Parish tax. In Louisiana the Parish Sheriff is, ex-Officio Tax Collector of all *ad valorem* taxes levied by the State and all local subdivisions. *La. Const, (1921) Art. 7, Sec. 65.*

II. *LOUISIANA TAX-EXEMPTIONS ALL CONSTITUTIONAL*

It is elementary that the provisions of a state law, Constitution especially, as to tax exemption, is peculiarly a matter of the public policy of that state; to be determined solely by its law as construed by its Courts, which are the final judicial authority thereasto; and which will

not be interfered with by the United States Supreme Court in the absence of a clear, emphatic and inescapable conflict with the Federal Constitution.

Arizona Emp. Liab. Cases, 250 U.S. 400, 63 L. Ed. 1058, 39 S. Ct. 553;
Ex Parte Worcester Bank, 279 U.S. 347, 73 L. Ed. 733, 49 S. Ct. 368;
Pacific Etc. Co. vs. White, 296 U.S. 176, 80 L. Ed. 138, 56 S. Ct. 159;
Avery vs. Alabama, 308 U.S. 444, 84 L. Ed. 377, 60 S. Ct. 321;
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Musser vs. Utah, 533 U.S. 95, 92 L. Ed. 562, 68 S. Ct. 307;
Bob. Lo. Co. vs. People, 333 U.S. 28, 92 L. Ed. 455, 68 S. Ct. 350.

The Supreme Court of Louisiana squarely held that the tax-exemption of "public property" did not apply to the local property owned by Warren County, Mississippi at all—in no event. It rejected the contention of Petitioner that a tax-exemption in Louisiana could be effected by a statute of either Louisiana or Mississippi,

where the law of Louisiana precludes any legislative exemption from taxation. *Hibernia Nat. Bank vs. La. Tax Com'n.*, 195 La. 43, 196 So. 15. (Tr. p. 80):

> "We therefore conclude that the Judge correctly found that **the bridge was not public property** within the exemption specified in *Paragraph 1 of Section 4 of Article 10 of the Constitution.*"

III. *OBITER DICTA*

Arguendo and as *obiter dicta*, purely, the Louisiana Supreme Court did infer—and clearly erroneously because predicated upon an unsound precedent—that were this bridge devoted solely and entirely to a public use only, it might come within the tax-exemption claimed. But, says that Court (Tr. pp. 78-82):

> " * * * But the flaw in plaintiff's position is that the facts do not sustain the conclusion sought. The stipulation of facts merely exhibits that it is not plaintiff's objective to operate the bridge for profit; that it is its present intention 'as soon as the indebtedness of said bridge is retired or sufficiently reduced so that payment can be otherwise assured from other revenues', to abolish the toll charges as to privately owned and operated highway passenger carrying vehicles but not 'as to commercial or common carrier vehicles, railroad cars, pipelines, telegraph and telephone wires and cables or as to any other similar use'. Conceding, for purposes of discussion, that the eventual abolition of tolls on pleasure passenger vehicles will constitute an effective dedication of the structure for public use so as to place it within the constitutional exemption, it is difficult to perceive how plaintiff's intention can be regarded as a consecration of the property to public use. If the revenues derived from the tolls of the bridge were being used exclusively for its maintenance and economic operation, it might be reasonable

to rule that there has been a dedication. But those are not the facts of the case. Actually, plaintiff is employing a substantial part of the revenue derived from tolls charged the general public to liquidate its obligation for the purchase price of the structure. Indeed, to hold that this bridge was dedicated to public use in 1948 merely because plaintiff evinces the intention of making it toll free at some future date, when the truth is that each and every (fol. 201) person using it is required to pay would be unrealistic, to say the least."

IV. *FEDERAL QUESTIONS BELOW*

The so-called Federal Constitutional Issues presented below were:

1. " * * * It is said initially that, since the Mississippi statute makes the bridge tax exempt in that state, the **full faith and credit clause of the Federal Constitution** demands that it be likewise adjudged tax exempt in Louisiana. This proposition, unsupported by authority, is without substance. To approve it would be to accord to Mississippi extraterritorial jurisdiction which, we are sure, she has neither claimed nor assumed in enacting *Chapter 283 of her 1938 laws.*"

In addition it may be noted that the full faith and credit clause of the Federal Constitution was *not injected until this case reached the Louisiana Supreme Court where it was properly ignored* because not an issue but had it been that clause has nothing to do with State jurisdiction or public policy; in tax matters it applies to judgments only and has never been construed to insure extraterritorial recognition of a state statute.

In re Taylor, 28 F. (2d) 526;
Williams vs. North Carolina, 317 U.S. 287;
Yellow Cab Co. vs. Overcash, 133 F. 2d 228;

Klaxon Co. vs. Stentor Co., 212 U.S. 487;
Milwaukee Co. vs. White Co., 296 U.S. 268.

2. That the enactment of practically identical Bridge Revenue Bond Statutes by Louisiana and Mississippi constituted an **"interstate compact"** for tax-exemption of such structures! Citing *U. S. Const. Art. 1, Sec. X, Sub.-Sec. 3.* That contention, also originated in the State Supreme Court and there ignored, has apparently been abandoned here because obviously unsound.

3. That to tax this interstate toll bridge property situated in Louisiana violated the **interstate commerce** clause of the *Federal Constitution (Art. 1, Sec. 8).*

Much was made of this below but little here—so obviously without merit.

Detroit Bridge Co. vs. Cort'n. Com'n., 287 U.S. 295;
Miller vs. City of Greenville, 138 F. (2d) 712, 718.

4. **"Due Process"** and **"Equal Protection".**

It is here petitioner's contention (application p. 11) that the refusal of the Louisiana Supreme Court to extend the public property tax-exemption of the Louisiana Constitution to Louisiana *ad valorem* taxes upon local property of an interstate toll bridge owned by Warren County, Mississippi:

(a) Confiscates petitioner's property, which only earned a net revenue of an approximate $1,000,000.00 per year!

(b) Delays an alleged toll-free date, when it is admitted that when debts are paid tolls will be lifted only as to private passenger vehicles and continued forever as to railroad cars, commercial vehicles, busses, trucks, pipe lines,

telephone and telegraph wires, cables and all utility property using the bridge—to the permanent net profit to Warren County of several hundred thousand dollars per year!

(c) That the taxes prevent petitioner from fulfilling the "requirements" of the Act of Congress authorizing construction of the bridge over the navigable river and of the laws of Mississippi authorizing its acquisition by Warren County as to a "toll-free bridge"! Or, in other words, that a tax-exemption in Louisiana of local taxes was effected by a law of Mississippi or by an Act of Congress, which says not one word about taxes or tax-exemption.

V. *STATEMENT FOR RESPONDENT*

The contentions of petitioner that this Court should review the decision of the Louisiana Supreme Court to the effect that no burden upon interstate commerce is here involved, no full faith and credit requirement is impugned and no interstate compact existed, all run foul of the specific provisions of Rule 38 of this Court and its jurisprudence, that certiorari will not be granted to review a state Court's decision which merely follows the previous decisions of this Court upon the issues presented.

On those three issues the Supreme Court of Louisiana correctly holds:

(a) **Interstate Commerce** (Tr. p. 82):

> " * * * Counsel acknowledge that the Supreme Court of the United States, in *Henderson Bridge Co. vs. Kentucky*, 166 U.S. 150, 17 S. Ct. 532, 41 L. Ed. 953, has ruled directly to the contrary, holding that the operation of a toll bridge between states is not an interstate business. But

they suggest that the dissenting opinion in that case (it was a five to four decision) be adopted in the light of the facts of the case at bar. For our part, we see no reason to disagree with the Supreme Court of the United States aside from the fact that the decision in the *Henderson Bridge Co.* case has been approved in *Detroit Int. Bridge Co. vs. Corporation Tax Appeal Board*, 294 U.S. 83, 55 S. Ct. 332, 89 L. Ed. 777."

(b) **Full Faith and Credit** (Tr. p. 81):

"* * * It is said initially that, since the Mississippi statute makes the bridge tax exempt in that state, the full faith and credit clause of the Federal Constitution demands that it be likewise adjudged tax exempt in Louisiana. This proposition, unsupported by authority, is without substance. To approve it would be to accord to Mississippi extraterritorial jurisdiction which, we are sure, she has neither claimed nor assumed in enacting *Chapter 283 of her 1938 laws.*"

It is elementary that *Sec. 1, Art. IV of the Federal Constitution* has nothing to do with jurisdiction of the several states; (*In re Taylor etc. Co.*, 28 F. 2d 526); that it does not compel any state to subordinate its own public policy to that of another state (*Williams vs. N. Carolina*, 317 U.S. 287) or insure extraterritorial recognition of State Statutes (*Yellow Cab Co. vs. Overcash*, 133 F. 2d 228, *Klaxon Co. vs. Stentor Co.*, 313 U.S. 487). In tax matters it applies to judgments only (*Milwaukee Co. vs. White Co.*, 296 U.S. 268).

(c) **Interstate Compact** (Tr. p. 81):

"We find this contention somewhat difficult to understand. It is apparently predicated on the idea that, since Congress authorized the construction of the bridge and provided that it could be

> acquired by either Louisiana or Mississippi or their political subdivisions, and that, inasmuch as Louisiana and Mississippi have passed laws permitting their own subdivisions to purchase the bridge, this was a compact between the states which should be enforced. Suffice it to say that we think the point untenable for we experience much strain in regarding the legislation of Mississippi (*Chapter 283, Laws of Mississippi of 1938*) and *Louisiana* (*Act 287 of 1944*) to be agreements or compacts between these states."

Since, therefore, the decisions of this Court have settled the law upon those here purported Federal questions and the State decision here merely recognized and followed the same and no basic or policy concept exists necessitating a reversal of or alteration in that settled jurisprudence, no valid reason here exists for the allowance of certiorari upon those asserted Federal questions.

(d) (e) **DUE PROCESS AND EQUAL PROTECTION.**

The only other Federal question asserted is that the *ad valorem* taxation of this bridge property situated in Louisiana when, under other specific constitutional provisions two other interstate Mississippi River Bridges are tax-exempt, constitutes a deprivation of petitioner of due process and a denial of the equal protection of the law in violation of the *Fourteenth Amendment* to the Constitution of the United States.

Upon that point the Louisiana Supreme Court held (Tr. p. 82):

> "Finally, counsel say that taxation of the bridge is discriminatory—and consequently viola-

tive of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States—as all other bridges spanning the Mississippi River south of Memphis, Tennessee, are tax exempt.

"We are unable to discern merit in this contention. Aside from other considerations, it is plain that the Fourteenth Amendment of the Federal Constitution, declaring that no state shall deprive any person of life, liberty or property without due process of law nor deny any person within its jurisdiction the equal protection of the laws, is utterly (fol. 204) without application to the political subdivisions of a state, which cannot be viewed as a person within the purview of the constitutional provision. See *Shelby vs. City of Pensacola (Fla.)* 151 So. 53; *Rilty vs. Stack (Cal.)* 18 P. (2d) 110 and *Los Angeles County vs. Superior Court (Cal.)* 18 P. (2d) 112."

In addition it may be noted that **no question of "Due Process" was plead below** (Tr. p. 7; Pet'n. p. 16):

"The assessment and collection of the said *ad valorem* taxes by the defendant is also unconstitutional, null and void and of no effect in that it is a violation of the provisions of the Fourteenth Amendment to the Constitution of the (fol. 9) United States of America in that the attempt to levy and collect said tax and the refusal to exempt said bridge as public property is a denial to plaintiff of the equal protection of the laws of Louisiana, particularly in view of the fact that the other publicly owned toll bridges, three in number, spanning the Mississippi River either wholly within the State of Louisiana or having one of their termini within the State of Louisiana are all exempt from *ad valorem* taxes within the State of Louisiana".

Furthermore, **no procedural issue is here involved;**

it being admitted that full notice and hearing was afforded this taxpayer.

Thus, petitioner's only really substantial contention here is that because the **New Orleans bridge** is tax-exempt because owned by a Louisiana Public Authority (City of New Orleans), the **Natchez Bridge,** was exempted by a Constitutional amendment adopted in 1938 exempting all such bridges "hereafter constructed", and the **Baton Rouge Bridge** is owned by a state agency (Department of Highways), and the **Greenville Bridge,** between Mississippi and Arkansas was exempted from taxes by the laws of both Arkansas and Mississippi, Petitioner is denied equal protection because its Constitutional tax-exemption (*La. Const. 1921, Sec. 4, Art. 10, pp. 7*) had expired.

It is here stipulated that this Bridge—the **Vicksburg Bridge,** privately owned, was constructed in 1930. It was granted a five year tax-emption, which expired in 1935—though no taxes were levied until one year thereafter. The **Natchez Bridge,** owned by Natchez, Mississippi, was completed in 1940 under a Constitutional Amendment of 1938 exempting all such bridges "hereafter constructed". The **Greenville Bridge,** spanning the river between Mississippi and Arkansas, was completed in 1940, owned by the City of Greenville, was tax-exempted by the laws of both states. The **Baton Rouge Bridge,** owned by the Louisiana Department of Highways, entirely within Louisiana, was completed in 1948. The **New Orleans Bridge,** constructed in 1935, is owned by the City of New Orleans. (Tr. 64-71).

In other words the Baton Rouge and New Orleans Bridges are tax-exempt because "public property",

owned by Louisiana public authority. The Natchez Bridge, built in 1940, was exempted by a specific constitutional amendment of 1938, enacted to encourage it and similar projects. The Greenville Bridge does not touch Louisiana and was exempted by the laws of both states involved, Mississippi and Arkansas. The Vicksburg Bridge was built in 1930 under a Constitutional tax-exemption of five (5) years.

So, Petitioner now contends that, under those circumstances it is deprived of equal protection of the laws, in violation of the Fourteenth Amendment, because the Supreme Court of Louisiana held that it owned this bridge in a proprietary rather than in a governmental capacity—at least in part since the Vicksburg Bridge is a combination railroad bridge, the railroad half of which is under perpetual lease to one railroad, exclusively, for an annual rental based upon its per-car use.

The Louisiana Supreme Court predicated its decision that the equal protection clause did not apply to a political subdivision of a state—Warren County, Mississippi. But, it could well have rejected the application of the equal protection clause, had an individual or the state itself been involved.

If that contention means to say that a State must tax all property alike or that it may not tax one piece of property without also taxing every other physically similar piece of property or if it means to say that the State may not regard the ownership of property in determining to tax it, then, in either event, the mere statement of any such contentions would seem to afford their own refutation, superficiality and unsoundness.

It is both trite and elementary to point out that the equal protection clause does not prevent reasonable classification of property for the purpose of taxation and such classification is not even reviewable by Courts unless it is palpably arbitrary. Any reasonable and practical basis of classification is proper and constitutionally permissible, even if it results in inequality, inequity or some other ground for classification might appear better.

What is there unreasonable, arbitrary, discriminatory or impracticable in a state law providing that a certain class of property owned by it or its subdivisions or constructed after a certain date shall not be taxes, while property owned by another state or created after a certain time shall be taxed?

All states and taxing authorities grant tax exemptions to some property in order to encourage its construction or development, while like property previously existing is taxed.

Obviously, the purpose and reason for exempting the New Orleans and Baton Rouge bridges is that they are owned by political subdivisions of this State, and are, therefore, public property in the strictest sense. The exemption of the Natchez bridge and all "hereafter constructed" bridges was, of course, to aid in and encourage its construction.

What Petitioner here attempts to contend is that because those bridges are exempt the equal protection clause compels Louisiana to exempt the Vicksburg Bridge which was built many years ago and then itself received a five-year exemption. That contention is to say that every tax-exemption granted, whensoever, to any enter-

prise, must be likewise granted to every other enterprise of the same kind!

That is simply not the law; nor is any such concept the contemplation, meaning or effect of the equal protection clause of the Fourteenth Amendment.

The fact that the classification is inequitable is of no effect, nor that it may be poor or bad discretion, poor economy, may be unwise, unnecessary, or imprudent, result in inequality or even actual discrimination. Those results or factors do not condemn under the equal protection clause, if the basis of that classification be reasonable and not arbitrary or capricious.

The burden rests, not upon Respondent to here warrant and justify this classification, but squarely and solely upon petitioner to prove unreasonableness and to negative every conceivable basis which might be urged to support it. That Petitioner has not even undertaken to do.

N. O. v. LeBlanc, 139 La. 113, 71 So. 248;
Ricks v. Dep't. of Civil Service, 200 La. 341, 8 So. (2d) 49;
Peck v. City of New Orleans, 199 La. 76, 5 So. (2d) 508, 517;
Lindley v. National Carbonic Co., 270 U.S. 61;
Ex parte Tigner, 310 U.S. 141;
Madden v. Kentucky, 309 U.S. 83;
L. & A. Ry. Co. v. Shaw, 121 La. 997, 46 So. 994;
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State v. Union Bldg. Corp., 185 La. 598, 170 So. 7;
American Sugar Refining Company v. State of

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Rast v. Van Deman & Lewis Company, 240 U.S. 342, 36 S. Ct. 370, 60 L. Ed. 679;

State Board of Tax Commissioners of Indiana v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 541, 75 L. Ed. 1248;

Quong Wing v. Kirdendall, 223 U.S. 59, 32 S. Ct. 192, 56 L. Ed. 350.

Thus it appears clear that there is nothing of real substance in Petitioner's "equal protection" point.

Therefore, we submit, there is here presented no issue where the validity of any state statute is drawn in question on the ground of its being repugnant to the Constitution of the United States.

The decision of the Louisiana Supreme Court could not have erred as to any ruling upon due process of law because no such issue was raised by the pleadings or pending before it.

The equal protection clause has never been construed to preclude the classification of property by a state for taxation purposes, nor to compel a state to make retroactive as to all such property an exemption from taxation granted to encourage the development of a particular class of property, howsoever owned.

The full faith and credit clause does not compel Louisiana, where tax-exemptions are constitutional solely, to effect a legislative exemption in a statute of Mississippi or even of Louisiana.

No such exemption from taxes is found in the Act of Congress authorizing the construction of this bridge—pretermitting its validity had it so provided.

It is settled by the decisions of this Court that the physical property of an interstate bridge is not commerce at all and its taxation cannot constitute a burden upon interstate commerce, in any event.

Nor does any Act of Congress require this bridge to be made toll-free at any time—or at all except under prescribed conditions. It merely authorizes its acquisition by public authority as a toll bridge and permits the collection of tolls—within its owners' discretion, subject only to supervision by the Secretary of War. Half this bridge structure is a railroad bridge used only by the Illinois Central Railroad, exclusively. There is no contemplation that it will ever become toll-free, nor will the vehicular portion, except as to private passenger vehicles (Tr. p. 72).

No principle of "comity" could deprive any state of its power to tax physical property situated within its borders. Nor is there the slightest equity in petitioner's contention. This bridge earns, net, a million dollars per year. The Louisiana tax here involved was less than $50,000.00 per annum. The Bridge Bond Indenture here provides for the payment in Mississippi "in lieu of taxes" the sum of $25,000.00 per year out of a "Tax Reimbursement Fund" for local taxes in Mississippi. (Tr. p. 72)

VI. *CONCLUSION*

There is nothing of serious or national importance or interest presented by this record. The Fourteenth Amendment was never intended and has never been held to preclude a state from adjusting its system of taxation

in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all. It may impose different specific taxes. The Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice, and which every state, in one form or another, deems it expedient to adopt. *Cooley on Taxation (4" Ed.) Sec. 249.*

51 Am. Jur. Secs. 559, 560, 561.

> "Although, in the absence of constitutional prohibition, a state or a municipality having general powers of taxation may tax its own property, if it sees fit to do so, in the absence of a manifest intention otherwise, it is a generally accepted principle that the property of a particular body politic, whether used for public purposes or held for the income to be derived therefrom, is not taxable by the same body politic * * * ".
>
> "The exemption of state property extends to the property of all public departments of the state, even though the title is in a board of trustees or in a separate corporation, as it is often the case with a state university or other state institution, and to lands bought by a state at a sale for nonpayment of taxes and held subject to the former owner's right of redemption.
>
> "Property of one state located in another state is held to be taxable where it is situated,

unless there is some agreement to the contrary, since to exempt such property would throw an additional burden on the remaining property in the same taxing district and thus cause the owners of such property to be taxed for the benefit of another state".

State ex rel Taggart vs. Holcomb, 116 Pac. 251.

" * * * when a city of the state of Missouri comes into Kansas, it comes as a private party and brings with it none of the prerogatives of sovereignty. The general rule is that all property, not expressly exempted, is taxable, and the fact that the state does not tax itself and its municipalities to obtain revenue for itself is no reason why a foreign municipality who is here in the capacity of a private proprietor, and whose property receives protection from the state, should contribute nothing towards that protection or should escape paying the taxes imposed upon other owners of property. It is clear that the exemptions from taxation, provided for the state and for cities and municipalities of the state, are only declaratory of the immunity that would be granted on fundamental principles of government, and that the cities and municipalities referred to in the statute and Constitution are those of our own state.

"The fact that municipalities of another state, which become proprietors in Kansas, are not accorded exemption from taxation, is no basis for the claim that the interpleader is denied the equal protection of the laws or deprived of property without due process of law in violation of the federal Constitution".

The ultimate fact here is inescapable and undeniable. Petitioner presently collects tolls from all motor vehicles, railroad cars, pipe lines, telephone and telegraph cables, commercial vehicles and everyone and

everything moving over this bridge, except pedestrians.

When the outstanding revenue bonds are paid or reduced to a level which will enable them to be eventually retired from tolls from railroad and utility and commercial vehicle use, it is contemplated that no tolls will be thereafter collected from private passenger vehicles but tolls will, thereafter for all time, continue to be collected from all commercial vehicles, utilities, railroad cars, pipe lines, cables, etc., so, that, Petitioner will continue to benefit, solely, by the net profit of several hundred thousands of dollars per year.

THEREFORE, petitioner is not here performing a purely public service or governmental function. It has made a very profitable investment by acquiring the ownership of physical property situated within the State of Louisiana, Parish of Madison. No reason or concept of equity, justice of fairness support its effort to escape the payment of its fair share of the *ad valorem* tax burden.

There is no merit in this application for certiorari, which should not be allowed, for either legal or equitable reason.

Respectfully submitted,

FRED. G. HUDSON, JR.,
Monroe, Louisiana,
THOMPSON L. CLARKE,
District Attorney,
St. Joseph, Louisiana,
Attorneys for Respondents.

HUDSON, POTTS, BERNSTEIN
& DAVENPORT,
Of Counsel.